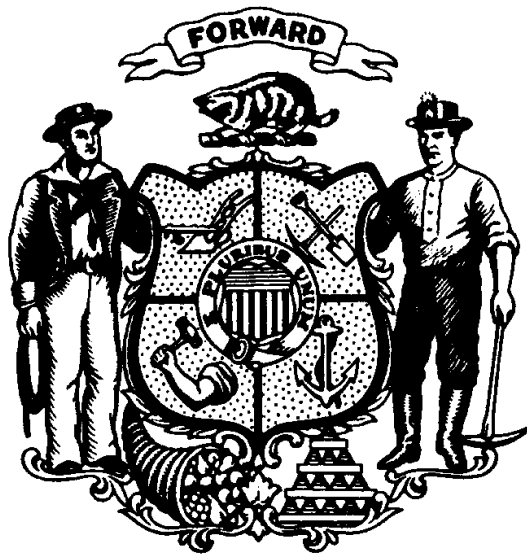


WISCONSIN ADMINISTRATIVE REGISTER

No. 501



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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

**(Fee Schedule, Ch. Comm 2)
(Credentials, Ch. Comm 5)
(Elevators, Ch. Comm 18)**

Rules adopted revising **chs. Comm 2, 5 and 18**, relating to inspection of elevators and mechanical lifting devices.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Department inspects elevators and mechanical lifting devices to ensure these units are installed and operating in accordance with the elevator safety rules. The Department is required to inspect both new and existing elevator installations. Due to the increased number of elevators and mechanical lifting devices installed in new construction, the Department has not been able to keep up with all of its required inspections. To ensure that the citizens of Wisconsin are safe when using elevators and other mechanical lifting devices, the Department must increase the number of people performing these safety inspections.

The Department rules relating to fees, certification, and inspection procedures are being modified to permit additional individuals to perform inspections of elevators and other mechanical lifting devices. The Department proposes to fund additional inspections by amending its fees to match Department

expenses. Plan review and certificate of operation fees would be lowered. Inspection fees would be raised.

Publication Date: May 4, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 1997
Hearing Date: July 29, 1997

EMERGENCY RULES NOW IN EFFECT (3)

Department of Corrections

1. Rules adopted creating **ch. DOC 304**, relating to inmate secure work groups.

Finding of Emergency

The Department of Corrections finds an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Effective June 1, 1997, appropriations will be made available to the Department of Corrections for the establishment of secure work groups. Section 303.063 (2), Stats. requires that if the Department establishes a secure work program, the Department shall, before implementing the program, promulgate rules specifying the procedures and regulations relating to the program. The Department has just begun the permanent rule process for establishing the administrative rules for the secure work program. It typically takes nine months for a permanent administrative rule to be promulgated from the time the permanent rule making process begins.

The Department needs to adopt administrative rules regarding the organization and operation of the secure work group program in order to have rules in place which will comply with Sec. 303.063 (2), Stats. The rules will provide for the protection of the public, the correctional officers and the inmates by providing the requirements for participation in the program as well as providing for safety and security concerns.

An emergency currently exists as the prison population is idle and needs secure work groups to provide inmates work opportunities, to prepare inmates for work opportunities upon release to the community, and to reintegrate inmates into the community.

Publication Date: May 30, 1997
Effective Date: May 30, 1997
Expiration Date: October 28, 1997
Hearing Dates: August 25, 28 & 29, 1997

2. Rules adopted creating **ch. DOC 332**, relating to registration and community notification of sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: The legislature has directed the department to implement programs for sex offender registration and community notification by June 1, 1997. Emergency rules are necessary to implement the

June 1, 1997, timeline mandated by the legislature, inform sex offenders of registration procedures, and inform law enforcement, victims and the public of the right to access information under the procedures designed by the department. Emergency rules are necessary to implement the June 1, 1997, timeline established by the legislature while permanent rules are developed and promulgated.

Publication Date: June 1, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 1997
Hearing Dates: August 27, 28 & 29, 1997

3. Rules adopted revising **ch. DOC 310**, relating to inmates complaint review system.

Finding of Emergency

The Department of Corrections finds an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

There is a Corrections Complaint Examiner with two investigator positions and a program assistant position at the Department of Justice. The number and placement of these Corrections Complaint Examiner positions have been in effect for years. At the present time there is a substantial backlog of approximately 3,000 inmate complaints which need to be reviewed by the Corrections Complaint Examiner. The Department of Justice's position is that it will no longer do the Corrections Complaint Examiner function.

The Department must change its administrative rule to reflect the placement of the Corrections Complaint Examiner function from the Department of Justice to the Department of Corrections. The Department must also change its administrative rule regarding inmate complaints to make the system more efficient as a substantial backlog now exists, and there will be no new positions at the Department of Corrections to do the work of the Corrections Complaint Examiner.

The Department's purpose in the inmate complaint review system is to afford inmates a process by which grievances may be expeditiously raised, investigated, and decided. An efficient inmate complaint review system is required for the morale of the inmates and the orderly functioning of the institutions. An emergency exists due to the current backlog and the proposed moving of the function which will require the Department of Corrections to do the work of the Corrections Complaint Examiners with no new positions.

Publication Date: August 4, 1997
Effective Date: August 4, 1997
Expiration Date: January 2, 1998

EMERGENCY RULES NOW IN EFFECT

Health and Family Services **(Health, Chs. HSS 110—)**

Rules adopted revising **ch. HSS 163**, relating to certification for lead abatement work and lead management activities.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage, and even death. Occupational

exposure in adults may result in damage to the kidneys, the central nervous system in general, and the brain in particular, and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to have birth defects, mental retardation or behavioral disorders, or to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards in order to determine the appropriate method of hazard reduction or abatement, it is imperative that persons who provide lead hazard evaluation and other lead management services be properly trained to ensure accurate lead inspection or assessment results. A reliable lead inspection or assessment is necessary to ensure a lead-safe environment for building occupants, especially children under the age of six, who are the most vulnerable population affected by lead-based paint and lead-contaminated dust and soil.

Under s. 254.176, Stats., the Department may establish training and certification requirements for any person who performs or supervises lead hazard reduction or lead management. In addition, s. 254.178, Stats., states that no person may advertise or conduct a training course in lead hazard reduction or lead management that is represented as qualifying persons for state certification unless the course is accredited by the Department.

In 1993, the Department created ch. HSS 163, Wis. Adm. Code, Certification for Lead Abatement and Other Lead Hazard Reduction, to regulate the training and certification of lead abatement workers and supervisors and to accredit the corresponding training courses. Rules were needed to meet eligibility requirements for a \$6 million federal Department of Housing and Urban Development (HUD) grant to fund lead hazard reduction in low and moderate income housing where children under the age of six are found to have elevated blood lead levels.

Development of rules for training and certifying lead management professionals, including lead inspectors, risk assessors, and project designers, and for accrediting the corresponding courses, was postponed pending publication of U.S. Environmental Protection Agency (EPA) lead training and certification regulations. Initially expected in June 1994, these EPA regulations were not published until August 29, 1996.

Since most lead management work to date has been associated with elevated blood lead level investigations conducted by state and local government employees who received appropriate training from EPA regional lead training centers, the delay in lead management rules was not a health hazard. The creation of the private inspection and risk assessment service market resulting from new federal HUD/EPA disclosure regulations, however, poses a health hazard if that market is not properly regulated.

Joint HUD/EPA regulations (24 CFR Part 35 and 40 CFR Part 745) now require that landlords and home sellers disclose the known presence of lead in rental units and homes being sold. These regulations took effect September 6, 1996, for owners of more than four dwelling units and December 6, 1996, for owners of four or fewer dwelling units. In addition, a home buyer is allowed 10 days to obtain a lead inspection or risk assessment before final obligation to purchase a home under a signed offer to purchase.

Due to the lack of state-accredited training courses and state-certified lead management professionals to fill the demand, lead management services are being offered by persons who may not possess appropriate education, experience or training. Unqualified lead inspectors and risk assessors can have an adverse effect on the state's residential marketplace. Based on an inaccurate inspection, a mortgage company could deny a mortgage loan, a home sale could fall through, or a property owner could expend large sums of money for unnecessary lead abatement actions. Even worse, the health of children may be jeopardized by erroneous findings that a lead hazard is not present, which can result in improper handling of lead-based paint materials.

HUD recently announced it was awarding the State of Wisconsin and the City of Milwaukee additional lead hazard reduction grants totaling over \$6.5 million. The grants require that money be disbursed only for lead-based paint activities performed by state-certified persons who have completed state-accredited lead training courses. Since Wisconsin does not yet certify lead inspectors, risk assessors, or project designers, grant mandates cannot be fully met, which could lead to funding difficulties and delay vital abatement activities.

This emergency order amends ch. HSS 163 to require accreditation of lead inspector, risk assessor and project designer training courses and, beginning April 19, 1997, certification of lead inspectors, risk assessors and project designers. In addition, references to “lead abatement or HUD-funded lead hazard reduction” have been changed to add lead management services. The order also adds accreditation and certification fees.

These rule changes are being published by emergency order to ensure, through Department certification and accreditation, that persons providing lead management services, including lead inspections, risk assessments and project design, are appropriately trained and qualified.

Publishing these rules as emergency rules also enables the State of Wisconsin and the City of Milwaukee to implement the federal grants which require that only trained and certified lead professionals perform lead hazard evaluations and lead hazard reduction and abatement.

Publication Date: February 18, 1997
Effective Date: February 18, 1997
Expiration Date: July 18, 1997
Hearing Date: March 18, 1997
Extension Through: September 15, 1997

EMERGENCY RULES NOW IN EFFECT (3)

Commissioner of Insurance

1. Rule was adopted revising s. **Ins 18.07 (5) (bg)**, relating to an increase in 1997–98 premium rates for the health insurance risk-sharing plan.

Exemption From Finding of Emergency

Pursuant to s. 619.14 (5) (e) Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

Analysis Prepared by the Commissioner of Insurance

1996–97 Premium Adjustments

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk-Sharing Plan (“HIRSP”) board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles and must be set at 60% of HIRSP’s operating and administrative costs. This rule adjusts the premium rates for the period of July 1, 1997 to June 30, 1998 for persons entitled to a premium reduction under s. **Ins 18.07 (5) (bg)**. The reduced premium rates are calculated by applying the percentages mandated by s. 619.165 (1) (b), Wis. Stats., to the rate that a standard risk would be charged under an individual policy providing substantially the same coverage and deductibles as provided under the plan. This

adjustment represents an average 5.8% increase in premium payments over the most recent rates.

Publication Date: May 16, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997
Hearing Date: June 30, 1997

2. Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees calculation of adding certain physician specialties and UW hospital and clinics residents’ fees.

Finding of Emergency

The deputy commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The deputy commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 97–71, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1997. The permanent rule was delayed pending legislative action on Senate Bill 145 which, if passed, will require a lowering of the fund fees originally proposed by the fund’s board of governors. Senate Bill 145 may still reach the Senate floor this legislative session but, in all likelihood not before July 1, 1997, when this fee rule must be in effect. Assembly Bill 248, the Assembly bill which mirrors Senate Bill 145, passed the Assembly overwhelmingly.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 15, 1997. Because the provisions of this rule first apply on July 1, 1997, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to the published notice was held on May 30, 1997.

Publication Date: June 20, 1997
Effective Date: June 20, 1997
Expiration Date: November 18, 1997

3. Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1997, adding certain physician specialties to those currently listed in the rule and providing that UW hospital and clinics residents’ fees be calculated on a full-time-equivalent basis in the same manner as medical college of Wisconsin resident fees are currently calculated.

Finding of Emergency

The deputy commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

1997 Wis. Act 11 was signed into law on July 14, 1997, but by its terms made effective July 1, 1997. Act 11 increased the required primary limits for health care providers subject to the fund from \$400,000 to \$1,000,000 for each occurrence and from \$1,000,000 to \$3,000,000 for an annual aggregate limit. A prior emergency rule effective June 20, 1997, set fund fees for the current fiscal year beginning July 1, 1997, based on the lower liability limits then in effect. The enactment of Act 11 on July 14, 1997, increasing the primary limits made this emergency rule necessary to reduce fund fees as of July 1, 1997, the effective date of that Act.

The commissioner expects that the revised permanent rule corresponding to this emergency rule, clearinghouse rule No.

97-71, will be filed with the secretary of state in time to take effect November 15, 1997. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 30, 1997.

Publication Date: August 12, 1997
Effective Date: August 12, 1997
Expiration Date: January 10, 1998

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Fish, Game, etc., Chs. NR 1---

Rule adopted creating s. NR 27.07, relating to notice of receipt of an application to incidentally take an endangered or threatened species.

Exemption From Finding of Emergency

1995 Wis. Act 296 establishes authority in the department of natural resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. Section 29.415 (6m) (e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

Publication Date: November 18, 1996
Effective Date: November 18, 1996
Expiration Date: See section 12m, 1996 Wis. Act 296
Hearing Date: January 14, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. Rules adopted revising ch. PI 35, relating to the Milwaukee private school choice program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

In his ruling, effective August 15, 1996, Judge Higginbotham prohibited the expansion of the Milwaukee private school choice program to religious private schools provided for under 1995 Wis. Act 27. On January 15, 1997, Judge Higginbotham determined that all other stipulations under the Act are allowed to continue until June 1997. At that time all of the provisions under the Act are suspended and the program reverts to previous statutory language.

Since the provisions under the Act (except for the participation of religious schools) are to be implemented for the remainder of the

1996-97 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as provided for under the Act. The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Since the private school choice program has yet to be reviewed by the Court of Appeals and possibly the Supreme Court, only emergency rules will be promulgated at this time in order to implement the provisions under the Act through the end of the 1996-97 school year. Permanent rules will be developed when judicial review is finalized.

Publication Date: February 19, 1997
Effective Date: February 19, 1997
Expiration Date: July 19, 1997
Hearing Date: April 1, 1997
Extension Through: August 30, 1997

2. Rules adopted revising chs. PI 3 and 4, relating to teacher certification requirements and certification program requirements.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare.

Proposed permanent rules were submitted to the Wisconsin Legislative Council on May 27, 1997. Most of the modifications made under the proposed permanent and emergency rules clarify, eliminate redundancy, and streamline current requirements to make the provisions under ch. PI 3 and 4 easier to read, understand, and implement. The rules also provide for consistency with other state agency licensure activity.

In order for teachers to apply for or renew specified licenses (license are issued July 1 through June 30) and for universities to have program requirements in place in time for the upcoming school year, rules must be in place as soon as possible.

Publication Date: July 1, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Department of Revenue

1. Rules were adopted amending s. Tax 11.05 (2)(s) and revising s. 11.86 (6), relating to sales and use tax treatment of landscaping services.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Sections Tax 11.05 (2)(s) and 11.86 (6), Stats., state that landscaping services (e.g., planting, mowing, and fertilizing grass) are only taxable when they are performed in developed areas. Similar services performed in undeveloped areas (e.g., along highways) were determined by the department to not be landscaping services and therefore, the sale of such services was not subject to sales or use tax.

In case of the *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue* (8/28/96 and 4/4/97, Docket#93-S-569), the Wisconsin Tax Appeals Commission held

that there was no statutory basis for the distinction made by the department that certain services performed in developed areas were landscaping while the same services performed in undeveloped areas were not landscaping.

It necessary to promulgate this rule order to remove any threat of estoppel arguments and revenue loss to the state as a result of information contained in these rules that implies planting, mowing, fertilizing, and similar services performed in undeveloped areas are not taxable.

Publication Date: May 18, 1997
Effective Date: May 18, 1997
Expiration Date: October 16, 1997
Hearing Date: July 29, 1997

2. Rules adopted repealing **ch. ATCP 53** and creating **ch. Tax 53**, relating to increasing plat preview fees to cover all of the current costs of activities and services provided by the department under ss. 70.27 and 236.12, Stats.

Finding of Emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

For the past three years, program costs have out paced revenues received. The Plat Review section has relied on their substantial cash balance to cover the difference. Projections indicate that cash reserves will be depleted within the next year or earlier. Without a plat review fee increase significant cutbacks in service to customers, the public, other state agency programs, and local units of government will be necessary. With such cut-backs state certified plats with saleable but not buildable lots could result. It should be noted that this program has not had a rate increase since 1985.

In order to address this problem, an administrative rule is in the process of being promulgated. Due to the complexities of where the Plat Review section physically resides (DATCP), who has program responsibility for it, combined with the 1996 Memorandum of Understanding between the Department of Revenue and the Department of Commerce, the administrative rule process has taken longer than anticipated and it is expected that the rule will not be completed for another 90 days.

In order to ensure that funding will be sufficient and that services to the citizens of this state remain uninterrupted, an emergency rule is necessary. In particular, this rule addresses the following needs:

- Ch. ATCP 53 is repealed.

- Ch. Tax 53 is created. Under this rule certain fees charged for plat review are increased.

Publication Date: June 1, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 1997
Hearing Date: July 11, 1997

EMERGENCY RULES NOW IN EFFECT

State Fair Park Board

Rules adopted revising **chs. SFP 2** and **7**, relating to regulation of activities at the state fair park and revising bond schedule.

Finding of Emergency

The Wisconsin State Fair Park Board finds that an emergency exists and that the adoption of rules is necessary for the immediate

preservation of the public peace, health, safety and welfare of its citizens. The facts constituting this emergency are as follows:

During the annual State Fair, which is scheduled to begin on July 31, 1997, the Wisconsin State Fair Park is host to over 100,000 people per day and millions of dollars in merchandise and property. Initially, chapters SFP 1–7 were designed primarily to protect the property of the State Fair Park.

However, crime patterns at the State Fair Park have changed dramatically since those rules were adopted in 1967. With the increases in attendance and number of events in the intervening years, the number and severity of crimes against State Fair visitors, patrons, and property have necessarily increased. Also, a general rise in gang-related activity at Park events and during skating hours at the Pettit National Ice Center has occurred over the last several years. Consequently, there is a greater need for Park Police Department arrest authority on the Park grounds in order to ensure prosecutorial cooperation by Milwaukee County.

Due to excessive workloads, the Milwaukee County District Attorney's Office and the Milwaukee County Circuit Court system are reluctant to process and charge offenders for relatively minor property-type acts prohibited under the current SFP rules. Area and suburban Milwaukee County Police Departments have alleviated similar problems by conforming their ordinances to the county and state codes, authorizing their Police Departments to make lawful standing arrests for acts which the county will prosecute.

The State Fair Park Board seeks the same level of cooperation from Milwaukee county by conforming its rules to the county code. Therefore, these proposed emergency rules prohibit such activities as loitering, spray painting, theft, battery, and resisting/obstructing an officer, as well as various weapons prohibitions. There is also included provisions to protect the police horses which are not only an integral part of Park enforcement but are also a major public relations tool. With these changes, the Park administration can ensure a safe and family-oriented environment at this year's State Fair and other Park events. It is necessary to use the emergency rule for processing the proposed rule change to Administrative Code, reference to the bail bond schedule, section 5, s. SFP 7.02. Section 5, s. SFP 7.02 is amended to repeal the old bond schedule and recreate the new bond schedule to align the bond code with the corresponding section in the Wisconsin Administrative Code to take effect before the 1997 Wisconsin State Fair begins on July 31, 1997.

The State Fair Park Board has begun the permanent rule process but the normal process will take between 6 and 9 months to complete. It is imperative to have these rules in place by the time of the 1997 State Fair.

These rules are therefore adopted as emergency rules to take effect upon publication in the official state newspaper and filing with the Secretary of State and the Revisor of Statutes as provided in s. 227.24 (1) (c), Stats.

Publication Date: August 1, 1997
Effective Date: August 1, 1997
Expiration Date: December 30, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Transportation

Rules adopted revising **ch. Trans 300**, relating to school buses.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. The amendments are needed to assure that school bus operators can purchase school buses manufactured using the latest in construction technology and providing equal strength and safety. Currently, there are estimated to be 60 buses on order by operators. Without this emergency rule, these buses could not be used in

Wisconsin when the school year begins in August 1997. Therefore, schools will start using alternative vehicles (production vans) because of the unavailability of the smaller school buses built to the safer school bus standards.

Publication Date: July 1, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997
Hearing Date: August 26, 1997

EMERGENCY RULES NOW IN EFFECT

Veterans Affairs

Rule adopted creating **s. VA 2.01 (2)(b)18.**, relating to the health care aid grant program.

Finding of Emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2)(b)2., Wis. Adm. Code, the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap.

The treatment plans typically encompass the removal of teeth with a resulting need for dentures. Failure to promptly provide denture could have a negative impact upon an individual's health. It is therefore necessary to assure that the Department has sufficient authority to pay for the dentures included in treatment plans already received during this fiscal year. The emergency rule cap will accomplish this goal.

Publication Date: April 7, 1997
Effective Date: April 7, 1997
Expiration Date: September 5, 1997
Hearing Date: April 18, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development

(Economic Support, Chs. DWD 11-59)

1. Rules adopted renumbering **subch. VII of ch. HSS 55** and creating **s. DWD 56.08**, relating to the administration of child care funds and required parent copayments.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Governor has directed the Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin Works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. The

Governor has approved a new schedule for child care copayments and this rule places the new schedule into operation. The use of an emergency rule allows the implementation of the new schedule immediately.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997
Extension Through: September 25, 1997

2. Rules were adopted creating **ch. DWD 12**, relating to Wisconsin Works program.

Exemption From Finding of Emergency

The Legislature in s.275(3) of 1995 Wis. Act 289 permitted the Department to promulgate the rules required under ss. 49.143 to 49.157, Stats., as created by Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency.

Analysis Prepared by the Department of Workforce Development

Wisconsin Works (W-2), the replacement program for the Aid to Families with Dependent Children (AFDC) program, is based squarely on work. Rather than offering welfare checks to those who do not work, as AFDC does currently, W-2 offers participants the opportunity to move into the work world and become self-sufficient through employment.

These rules provide the administrative framework under which the Department will implement a W-2 pilot program in two counties, Fond du Lac and Pierce, effective March 1, 1997. As the pilot counties for the Work Not Welfare program which began January 1, 1995, these two counties have had experience in implementing major welfare reform efforts. The W-2 program includes work opportunities, job access loans, education and training activities to enhance employability, intensive case management, child care and child support enforcement and other employment supports such as transportation assistance and access to health care services under the Medical Assistance program.

Wisconsin Works (W-2) was authorized through enactment of 1995 Wis. Act 289 which Governor Thompson signed into law on April 25, 1996. Under s.49.141(2)(b), Stats., if a federal waiver is granted or federal legislation is enacted, the Department of Workforce Development could begin to implement W-2 no sooner than July 1, 1996 and must fully implement the W-2 program statewide in September 1997. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which ends the entitlement program under Title IV-A of the Social Security Act and creates a block grant program under which states receive monies to provide cash and other benefits to help needy families support their children while at the same time requiring families to participate in work program activities which will help them become self-sufficient. In general, a state may not use any part of the TANF grant to provide assistance to a family for more than 60 months.

States must ensure, under section 114 of P.L. 104-193, that families who meet the AFDC eligibility requirements in effect on July 16, 1996, have access to Medical Assistance. Wisconsin has not yet obtained the necessary waivers or federal legislation that would allow the implementation of the W-2 health plan. Therefore, W-2 participants who meet the July 16, 1996, AFDC eligibility requirements or are eligible under s.49.46 or 49.47, Stats., and the implementing administrative rules, Chs. HFS 101-108, administered by the Department of Health and Family Services, may apply and be determined eligible for Medical Assistance.

Under W-2, there will be a place for everyone who is willing to work to their ability. The program is available to parents with minor children, low assets and low income who need assistance in becoming self-sufficient through employment. The W-2 program provides cash benefits only for those individuals who participate in

W–2 employment and training activities. W–2 agencies have the option, for participants in a community service job or a transitional placement, to aggregate education and training hours for approved programs to allow an individual to participate in education and training activities for more than 10 or 12 hours per week within the first few months of participation. Each eligible W–2 applicant will meet with a Financial and Employment Planner (FEP) who will help the individual develop a self-sufficiency plan and determine their place on the W–2 employment ladder. The ladder consists of four levels of employment options, in order of preference: unsubsidized employment; subsidized employment through a trial job for those participants who need minimal assistance but where unsubsidized employment is not available; a community service job for those participants who need to practice work habits and skills necessary to move into unsubsidized employment; and transitional placement for those unable to perform independent, self-sustaining work. Individuals placed in a trial job will receive wages from an employer. Individuals placed in a community service job will receive a monthly benefit of \$555 and individuals placed in a transitional placement will receive a monthly benefit of \$518. W–2 participants are limited to 24 months in a single subsidized employment position category. Extensions may be granted on a limited basis when local labor market conditions preclude opportunities or when the participant has significant barriers which prevent him or her from obtaining unsubsidized employment. Child care is available for those individuals who have children under the age of 13 and need child care in order to work or participate in a W–2 employment position. The W–2 program will be administered by contracted agencies which may include counties, tribal agencies and private agencies in geographic areas determined by the Department.

These are the rules for implementation of the Wisconsin Works program. The rules include eligibility requirements for those individuals applying for a W–2 employment position or child care, time-limited benefits for participants in W–2 employment positions, good cause for failure or refusal to participate in W–2 employment positions or other required employment and training activities, how sanctions are applied for failure to meet the W–2 employment position participation requirements, and school attendance requirements under the Learnfare program for the children of W–2 employment position participants.

Publication Date: March 1, 1997
Effective Date: March 1, 1997
Expiration Date: July 29, 1997
Hearing Dates: May 21 & 28, 1997
Extension Through: September 27, 1997

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Labor Standards, Chs. DWD 270–279)

Rules were adopted revising **ch. DWD 272**, relating to the minimum wage.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

In addition to raising the minimum wage to \$4.75 per hour on October 1, 1996, and \$5.15 per hour on September 1, 1997, the

federal Fair Labor Standards Act provides for an “opportunity wage” of \$4.25 per hour which may be paid by each new employer to a person under the age of 20 during the first 90 days of employment. The Department’s permanent rules to raise the state minimum wage contained provisions creating an opportunity wage that are the same as those of the federal law.

On April 10, 1997, the State Senate Committee on Labor, Transportation and Financial Institutions suspended the portions of **CR 96–181** relating to the opportunity wage. The Department proceeded with formal adoption of the provisions of the rule that were not suspended; the permanent rule changes will become effective on June 1, 1997. On April 17, 1997, the Joint Committee for Review of Administrative Rules (JCRAR) unanimously approved extension of the Department’s emergency rule on minimum wage, which includes the provisions on the opportunity wage. The emergency rule extension lasts until June 27, 1997.

The respective votes of the two Legislative committees have caused uncertainty as to whether the provisions relating to the opportunity wage remain in effect through June 27, 1997, or expire on June 1, 1997. The JCRAR has met several times since the standing committee’s suspension but its only action on this issue was to extend the emergency rule, which includes the opportunity wage provision. The legal interpretation from the Legislative Council as to the precedence of the emergency rule provision vs. the permanent rule provision has not been definitive.

It appears that the JCRAR will vote in June on the standing committee suspension of the opportunity wage provisions of the permanent rule. If the JCRAR does not concur in the standing committee’s suspension, the Department will proceed to promulgate the opportunity wage provisions on a permanent basis. However, due to timelines required for promulgation of permanent rules, this provision would not likely take effect permanently until September 1, 1997. Thus, the delays in action coupled with interpretive uncertainty could result in a regulatory gap that would cause confusion amongst the state’s employees and employers over the provisions in effect after June 1, 1997. The Department believes that such uncertainty throughout the state would be undesirable.

In absence of definitive legal opinion or action on the opportunity wage issue by the JCRAR, this emergency rule alleviates uncertainty as to whether the opportunity wage provisions are effective after June 1 by explicitly maintaining their effect. The Department will make every reasonable effort to comply with the JCRAR’s intent once action is taken. If the JCRAR affirms the standing committee’s suspension, the Department will immediately withdraw the provisions of this emergency rule. If the JCRAR does not affirm the standing committee’s suspension, this emergency rule will prevent a gap in coverage of the opportunity wage between the date of JCRAR action in June and the effective date of permanent provisions on the opportunity wage.

This emergency rule also contains a provision that prohibits the displacement of an employee that occurs solely for the purpose of hiring an opportunity employee. This language is similar to a provision of the federal law and was included by the Department because the Senate Committee on Labor, Transportation and Financial Institutions asked that the state rule also contain this provision. This language was originally submitted to the Senate Labor, Transportation and Financial Institutions Committee as a germane modification to CR–96–181 on March 31, 1997. It was the Department’s intent to promulgate this provision as part of the permanent rule. However, this provision was inadvertently omitted from the final draft.

Publication Date: May 31, 1997
Effective Date: May 31, 1997
Expiration Date: October 29, 1997
Hearing Date: August 12, 1997

EMERGENCY RULES NOW IN EFFECT**Workforce Development****(Wage Rates, Chs. ILHR 290-294)**

Rules adopted revising **ch. ILHR 290**, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

On December 11, 1996, this Department adopted an emergency rule and began permanent rulemaking to amend the former **ch. ILHR 290**, Wis. Adm. Code, in accordance with 1995 Act 215, which

enacted changes in the laws governing the determination of prevailing wage rates for state and local public works projects. Among the provisions of that emergency rule was a section on the classification of subjourneypersons.

The initial emergency rule will expire on May 10, 1997. The Department has developed a different provision on subjourneypersons which it is submitting for legislative committee review as a part of the permanent rule in its proposed final draft stage. In the meantime, it is necessary to have a formal policy on subjourneypersons in effect so that the Department may continue to issue wage determinations on state and local public works projects without causing the projects to be delayed. Therefore, the Department is adopting the new subjourneyperson policy, and related procedural provisions, as an emergency rule.

Publication Date:	May 10, 1997
Effective Date:	May 10, 1997
Expiration Date:	October 8, 1997
Hearing Date:	June 19, 1997

STATEMENTS OF SCOPE OF PROPOSED RULES

Health & Family Services

Subject:

Chs. HFS 10 and 67 and HSS 118 – Relating to hearings on relief from institutional charges; a low-income standard for allocating state nutrition and senior volunteer funds; and maintaining the confidentiality of personal facts included in medical information obtained by Department staff in the conduct of official business.

Description of policy issues:

Description of objective(s):

To repeal three chapters of administrative rules for which there is no longer rulemaking authority or that no longer serve a purpose.

Description of policies -- relevant existing policies, proposed new policies and policy alternatives considered:

The three chapters of administrative rules that will be repealed because they are obsolete are the following:

1) Chapter HFS 10 states how a county or the state may apply for relief and how the Department is to conduct a hearing on that application when the county or state believes it is improperly charged for the cost of a person's care at a mental institution or child care institution operated by the Department or by a county. The statute relating to these hearings and the rules date from a time when the charge for the cost of care of persons at public charge was based on legal settlement. The statute was repealed in 1985. No old cases remain for resolution.

2) Chapter HFS 67 was created in 1982 to establish a low-income standard for allocating state supplemental funds to counties and tribal governing bodies providing meals in connection with the nutrition program for the elderly under s. 46.80 (5), Stats., and to counties and tribal governing bodies operating a non-federally funded senior companion or retired senior volunteer project authorized by s. 46.85, Stats. Section 46.80 (5) (c), 1991–92 Stats., directed the Department to define by rule the low income standard. The rulemaking requirement was repealed by 1993 Wis. Act 16.

3) Chapter HSS 118 was created in 1950 by the State Board of Health to protect the confidentiality of personally identifiable information included in health records obtained by Board staff in the conduct of official business. Subsequently, numerous health information confidentiality statutes were enacted. Until recently, however, they did not cover health information obtained by Board/Department health researchers directly from individuals. That was remedied when 1993 Wis. Act 27, effective January 1, 1994, created s. 250.04 (3) (b) 3., Stats., which provides explicit statutory protection to personally identifiable information included in completed health questionnaires and surveys.

Statutory authority:

Section 46.106 (4), 1983–84 Stats., s. 46.80 (5) (c), 1991–92 Stats., and ss. 227.11 (2) and 250.04 (7), Stats.

Estimates of staff time and other resources needed to develop the rules:

Estimated hours of staff time – 12 hours

Public Defender

Subject:

S. PD 3.038 (2) – Relating to the calculation of indigency.

Description of policy issues:

The primary objective of the proposed rule is to establish the criteria to be used when determining whether a Wisconsin Works (W–2) participant qualifies for public defender representation. W–2 will replace the Aid to Families with Dependent Children (AFDC) program. Although the Office of the State Public Defender (SPD) presently has rules governing the eligibility of people who receive AFDC, it does not have rules governing the eligibility of W–2 participants; thus, the SPD needs to promulgate rules related to the eligibility of W–2 participants.

Also, the proposed rule will delete the references to AFDC, relief of needy Indian persons, and general relief, as these programs either are or will be discontinued.

Statutory authority:

Section 977.02 (2m) and (3), Stats.

Anticipated time commitment:

The anticipated time commitment is 20 hours.

Regulation & Licensing Real Estate Board

Subject:

RL Code – Relating to clarification of administrative rules relating to real estate brokers and salespeople.

Description of policy issues:

Objective of the rule:

The changes being recommended relate to such issues as statutory authority, form, style and placement of provisions, conflicts or duplication of existing rules, the adequacy of references to related statutes, rules and forms, and the clarity, grammar, punctuation and use of plain language. They also include a provision to address the Americans With Disabilities Act, passing scores of licensing examinations, examination review and dishonest acts by examination candidates.

Policy analysis:

The proposed amendments will be made to many areas throughout the existing rules. With one possible exception, only minor changes would be made to existing rules. These changes should be made, since some references are no longer correct and some provisions are not consistent with recent statutory changes. As for ch. RL 22, the alternatives are to make several minor changes to this chapter or to repeal the whole chapter. The latter decision would be based on a determination by the Department and the Board that there is little need for apprentices in today's brokerage practices and that the use of unlicensed personal assistants has replaced the use of apprentices. Very few apprentices have been employed by brokers over the years since this chapter was created in 1972.

Statutory authority

Sections 227.11 (2), 440.42 (3) (b), 452.04, 452.05 and 452.07, Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

10 hours.

Regulation & Licensing

Subject:

RL Code – Relating to clarification of administrative rules for charitable organizations and professional fund-raisers.

Description of policy issues:*Objective of the rule:*

To make modifications relating to such issues as statutory authority, form, style, placement, clarity, grammar, punctuation and plain language. To clarify several elements in the definition of “solicit” as that term applies to the activities of a professional fund–raiser and to distinguish between solicitation by a professional fund–raiser and mailings made by a mailing service. To amend the requirement that a charitable organization which has received contributions in excess of \$100,000 during its most–recently completed fiscal year must file with the Department an audited financial statement for the charitable organization’s most recently–completed fiscal year.

Policy analysis:

Section 440.41 (8), Stats., defines “solicit” as “to request, directly or indirectly, a contribution and to state or imply that the contribution will be used for a charitable purpose or will benefit a charitable organization.” Section 440.41 (9), Stats., includes in the following elements in the definition of “solicitation”: “oral or written request” and “announcement to the news media or by radio, television, telephone, telegraph or other transmission of images or information concerning the request for contributions by or for a charitable organization or charitable purpose.” If a person solicits contributions on behalf of a charitable organization, it is required to register as a professional fund–raiser.

Section 440.42 (3) (b), Stats., requires a charitable organization which has received contributions in excess of \$100,000 during its most–recently completed fiscal year to file with the department an audited financial statement for the charitable organization’s most recently–completed fiscal year.

This rule–making proposed to create language which clearly excludes mailing services from the definition of “solicit” and the definition of “solicitation,” provided that the mailing services do not put forth their name as the solicitor of contributions. An alternative is to not address this issue by rule, but to simply permit a reasonable interpretation of the applicable statutes to speak for itself.

This proposal also would permit the Department to indefinitely extend the time during which a charitable organization would have to submit an audited annual financial statement if the charitable organization in a given fiscal year had an unexpected and usual increase in its usual contribution, causing the charitable organization to have to obtain an audit for which it had not budgeted. The extension would, however, include the proviso that the department could demand an audited financial report at any time in the future, if the department has a need for it. An alternative would be to raise the \$100,000 threshold for all charitable organizations and to require an audited financial statement when organizations exceed the higher dollar amount.

Statutory authority:

Sections 227.11 (2) and 440.42 (3) (b), Stats.

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

10 hours

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade & Consumer Protection

Rule Submittal Date

Notice is hereby given that on August 25, 1997, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. ATPC 30, Wis. Adm. Code, relating to the use of atrazine pesticides. Public hearings are required and will be held after the Wisconsin Legislative Council Rules Clearinghouse completes its review of the proposed rule.

Agency Procedure for Promulgation

The Division of Agricultural Resource Management is primarily responsible for promulgation of this rule.

Contact People

If you have questions regarding this rule, you may contact:

Jim VandenBrook
Telephone (608) 224-4501
Division of Agricultural Resource Mgmt.

Attorney James Matson
Telephone (608) 224-5022

Commerce

Rule Submittal Date

On August 18, 1997, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Comm 5, relating to credentials.

Agency Procedure for Promulgation

A public hearing is required. The agency unit responsible for promulgation of the rule is the Safety and Buildings Division.

Contact Person

Ron Acker
Telephone (608) 267-7907

Commerce

Rule Submittal Date

On August 29, 1997, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Comm 1, relating to environmental analysis and review procedures for Department actions.

Agency Procedure for Promulgation

A public hearing is required. The agency unit responsible for promulgation of the rule is the Safety and Buildings Division.

Contact Person

Jim Quast
Telephone (608) 266-9292

Medical Examining Board

Rule Submittal Date

On August 25, 1997, the Medical Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats.

The proposed rule-making order relates to dispensing or prescribing of controlled substances for the treatment of obesity.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for October 22, 1997.

Contact Person

Pamela Haack, Rules Center Coordinator
Telephone (608) 266-0495

Regulation & Licensing

Rule Submittal Date

On September 2, 1997, the Department of Regulation and Licensing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: s. 227.11 (2) and ch. 451, Stats.

The proposed rule-making order relates to the certification and regulation of acupuncturists.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for September 30, 1997.

Contact Person

Pamela Haack, Rules Center Coordinator
Telephone (608) 266-0495

Transportation

Rule Submittal Date

On August 29, 1997, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Staff.

Analysis

The proposed rule affects ch. Trans 261, relating to multiple trip mobile home permits.

Agency Procedure for Promulgation

A public hearing is required and public hearings are scheduled for October 7 and 8, 1997. The organizational units responsible for promulgation of the proposed rule are the Divisions of Motor Vehicles, Transportation Infrastructure Development and State Patrol.

Contact Person

Julie A. Johnson, Paralegal
Telephone (608) 266–8810

NOTICE SECTION

Notice of Hearings *Agriculture, Trade & Consumer Protection*

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATPC 30, Wis. Adm. Code, relating to the use of atrazine pesticides.

Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. The Department also invites comments on the draft environmental impact statement which accompanies the rule. Following the public hearings, the hearing record will remain open until **October 8, 1997** for additional written comments.

Copies of Rule

A copy of this rule may be obtained, free of charge, from:

Agricultural Resource Management Division
Telephone (608) 224-4505
Wis. Dept. of Agriculture, Trade and Consumer Protection
2811 Agriculture Dr.
Box 8911
Madison, WI 53708-8911

Copies will also be available at the public hearings.

An interpreter for the hearing-impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **September 15, 1997** either by writing to Paula Noel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608/224-4505) or by contacting the message relay system (TTY) at **608/224-5058**. Handicap access is available at the hearings.

Hearing Information

Five hearings are scheduled:

Date & Time	Location
Sept. 23, 1997 Tuesday (2 sessions) 1:00 to 4:00 p.m. 6:00 to 8:00 p.m.	Quality Inn 809 W. Clairemont Ave. EAU CLAIRE, WI
Sept. 24, 1997 Wednesday (2 sessions) 1:00 to 4:00 p.m. 6:00 to 8:00 p.m.	Holiday Inn U.S. Highway 51 & Northpoint Dr. STEVENS POINT, WI
Sept. 25, 1997 Thursday (2 sessions) 1:00 to 4:00 p.m. 6:00 to 8:00 p.m.	Holiday Inn 150 Nicolet Rd. APPLETON, WI

Sept. 29, 1997
Monday (2 sessions)
1:00 to 4:00 p.m.
6:00 to 8:00 p.m.

Super 8 Motel
100 Foundry Dr.
RICHLAND CENTER, WI

Sept. 30, 1997
Tuesday (2 sessions)
1:00 to 4:00 p.m.
6:00 to 8:00 p.m.

DATCP
2811 Agriculture Dr.
MADISON, WI

Written comments will be accepted until **October 8, 1997**.

Analysis Prepared by the Dept. of Agriculture, Trade & Consumer Protection

Statutory authority: ss. 93.07 (1), 94.69 (9), 160.19 (2), and 160.21 (1)

Statutes interpreted: ss. 94.69, 160.19 (2) and 160.21 (1)

In order to protect Wisconsin groundwater, the Department has adopted atrazine rules under ch. ATCP 30, Wis. Adm. Code. The current rules restrict the statewide rate at which atrazine pesticides may be applied. The current rules also prohibit the use of atrazine on approximately 1.2 million acres in areas where groundwater contamination attains or exceeds the enforcement standard established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code.

This rule amends the current ch. ATCP 30 rules as follows:

- It prohibits atrazine use on approximately 13,000 additional acres based on new groundwater test data. The rule creates 2 new prohibition areas and enlarges 5 others.
- It establishes conditions which must be met before the Department may repeal or reduce the size of an atrazine prohibition area.

New or Expanded Prohibition Areas

Current rules prohibit the use of atrazine in 96 designated areas. These include large prohibition areas in the lower Wisconsin river valley, Dane County and Columbia County, and smaller prohibition areas throughout the state.

This rule repeals and recreates 5 current prohibition areas to expand those areas, and creates 2 new prohibition areas. The rule includes maps describing each of the new and expanded prohibition areas.

Within a prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface which complies with ss. ATCP 29.151 (2) to (4), Wis. Adm. Code.

Standards for Repealing Prohibition Areas

This rule spells out conditions which must be met before the department may repeal or reduce the size of an atrazine prohibition area. In future annual updates to the atrazine rule, the Department may repeal or reduce the size of prohibition areas in which these conditions are met. This rule does not repeal or reduce the size of any atrazine prohibition area.

Under this rule, the Department must find all of the following before it repeals or reduces the size of a prohibition area:

- Tests on at least 3 consecutive groundwater samples, drawn from each well site in the prohibition area at which the atrazine concentration previously attained or exceeded the groundwater enforcement standard, show that the atrazine concentration at that well site has fallen to and remains at not more than 50% of the enforcement standard. The 3 consecutive samples must be collected at each well site at intervals of at least 6 months, with the first sample being collected at least 6 months after the effective date of the prohibition. A monitoring well approved by the Department may be substituted for any well site which is no longer available for testing.
- Tests (if any) conducted at other well sites in the prohibition area, during the same retesting period, reveal no other atrazine concentrations that exceed 50% of the enforcement standard.
- The Department determines, based on credible scientific evidence, that renewed use of atrazine in the prohibition area is not likely to cause a renewed violation of the enforcement standard.

Fiscal Estimate

The rule will be administered by the Agricultural Resource Management (ARM) Division of the Department of Agriculture, Trade and Consumer Protection (DATCP). The following estimate is based on enlarging 5 existing prohibition areas (PAs), creating 2 additional PAs, and establishing procedures to repeal prohibition areas in 1998.

Administration and enforcement of the proposal will involve new costs for the Department. Specialist and field investigator staff time will be needed for inspections and enforcement in the new PAs (0.1 FE, cost approximately \$4,000). Enforcement activities will be conducted in conjunction with current compliance inspections but at increased levels to ensure compliance with the additional prohibition areas. Compliance activities will be especially important in the first few years as growers, commercial applicators, dealers, and agricultural consultants in the PAs require education to comply with the new regulations.

Soil sampling conducted in the additional PAs to determine compliance with the rules will require an estimated \$2,000 in analytical services. In addition, a public information effort will be needed to achieve a high degree of voluntary compliance with the rule. Direct costs to produce and distribute the informational materials will be \$4,000.

Total Annual Costs to Create PAs: \$10,000

The following cost estimates are associated with procedures to repeal prohibition areas. These estimates are the same as reported in the fiscal estimate developed for the 1997 amendment to ch. ATCP 31, which established a generic prohibition area repeal process based on the atrazine example. The purpose and costs associated with the groundwater sampling necessary to meet repeal requirements follow.

First, the Department must reasonably conclude that atrazine concentrations throughout the prohibition area are below the enforcement standard (ES). To do this, well(s) upon which the pesticide prohibition area is based must be sampled a minimum of three times to qualify the prohibition area for repeal. When an existing atrazine prohibition area meets the criteria for repeal of the prohibition area, up to six wells within the prohibition area must also be tested for atrazine. Additionally, the well which initially tested above the enforcement standard within the prohibition area must be tested 2 and 5 years after repeal of the prohibition area. Total annual collection costs are \$7,600 and annual analysis costs are \$38,000.

Second, the Department must determine whether renewed use of atrazine will maintain compliance with the enforcement standard. This will require groundwater monitoring at agricultural field sites in areas where the pesticide is being reintroduced. This will involve establishment of 21 sites with 3 monitoring wells per site. Installation of the monitoring wells is a one-time cost. These wells will have samples collected and analyzed quarterly. The one-time costs of installing the monitoring wells is \$66,150.

Annual costs to sample the monitoring wells is \$12,600 for sample collection and \$63,000 for sample analysis.

One time Costs: Installation of 63 monitoring wells @ \$1,050 per well = \$66,150

Total Annual Costs to Repeal PAs: \$121,200

Total Costs:

The groundwater sample collection and analysis required by this proposal will involve new costs for the Department. The Department estimates additional staff costs of 0.1 FTE at \$4,000 for compliance and \$20,200 for groundwater sample collection for **\$24,200** of increased cost of State Operations – Salaries and Fringes. The \$6,000 in compliance sampling and public information costs and \$101,000 for groundwater sampling total **\$107,000** in increased State Operations – Other Costs. Total one-time costs are **\$66,150** for installation of monitoring wells. With the exception of the (0.1) FTE required for compliance, the increased costs of this amendment can not be absorbed by the Department.

Total Annual Costs Associated with ch. ATPC 30: \$131,200

The Department anticipates no additional costs for other state agencies. Water sampling programs within the Department of Natural Resources and local health agencies may receive short term increased interest by individuals requesting samples.

On Local Units of Government

The rule does not mandate that local government resources be expended on sample collection, rule administration or enforcement. The rule is therefore not expected to have any fiscal impact on local units of government.

The complete fiscal estimate is available upon request.

Initial Regulatory Flexibility Analysis

Businesses Affected:

The amendments to the atrazine rule will affect small businesses in Wisconsin. The greatest small business impact of the rule will be on users of atrazine — farmers who grow corn. The proposed prohibition areas contain approximately 13,000 acres. Assuming that 50% of this land is in corn and that 50% of these acres are treated with atrazine, then 3,250 acres of corn will be affected. This acreage would represent between 20 and 50 producers, depending on their corn acreage. These producers are small businesses, as defined by s. 227.114 (1) (a), Stats. Secondary effects may be felt by distributors and applicators of atrazine pesticides, crop consultants and equipment dealers. Since the secondary effects relate to identifying and assisting farmers in implementing alternative weed control methods, these effects will most likely result in additional or replacement business and the impacts are not further discussed in this document.

Specific economic impacts of alternative pest control techniques are discussed in the environmental impact statement for this rule.

Reporting, Recordkeeping and Other Procedures Required for Compliance:

The maximum application rate for atrazine use in Wisconsin is based on soil texture. This may necessitate referring to a soil survey map or obtaining a soil test. While this activity is routine, documentation would need to be maintained to justify the selected application rate. A map delineating application areas must be prepared if the field is subdivided and variable application rates are used. This procedure is already required under the current atrazine rule.

All users of atrazine, including farmers, will need to maintain specific records for each application. This procedure is already required under the current atrazine rule.

Atrazine cannot be used in certain areas of the State where groundwater contamination exceeds the atrazine enforcement standard in s. NR 140.10, Wis. Adm. Code.

Professional Skills Required to Comply:

The rule affects how much atrazine can be applied and on which fields. Because overall use of atrazine will be reduced in the State, alternative weed control techniques may be needed in some situations. These techniques may include different crop rotations, reduced atrazine rates, either alone or in combination with other herbicides, or combinations of herbicides and mechanical weed control measures.

While alternative weed control techniques are available, adoption of these techniques on individual farms will in some cases require assistance. In the past this type of assistance has been provided by University Extension personnel and farm chemical dealers. In recent years many farmers have been using crop consultants to scout fields, identify specific pest problems and recommend control measures. The Department anticipates these three information sources will continue to be used as the primary source of information, both on whether atrazine can be used and which alternatives are likely to work for each situation.

Notice to Dept. of Development

The Department has given notice of this proposed rule to the Wisconsin Department of Development, as required by s. 227.114 (5), Stats.

Draft Environmental Impact Statement

The Department has prepared a draft environmental impact statement (EIS) for proposed 1998 amendments to rules on the use of pesticides containing atrazine. Copies are available from the Department on request and will be available at the public hearings. Comments on the EIS should be directed to:

In care of Jeff Postle
Phone (608) 224-4503
Agricultural Resource Mgmt. Division
Wis. Dept. of Agriculture, Trade & Consumer Protection
P.O. Box 8911
Madison, WI 53708

Written comments on the EIS will be accepted until **October 8, 1997**.

Notice of Hearing ***Commerce*** ***(Environmental Assessment, Ch. Comm 1)***

Notice is given that pursuant to ss. 1.11, 101.02 (1), 560.01 and 560.02, Stats., the Department of Commerce proposes to hold a public hearing to consider the creation of ch. Comm 1, Wis. Adm. Code, relating to environmental analysis and review procedures for department actions.

Hearing Information

October 6, 1997 **Madison**
Monday **Room 265**
9:00 a.m. **GEF-1, State Office Bldg.**
 201 E. Washington Ave.

A copy of the rules to be considered may be obtained from the Department of Commerce, Division of Safety & Buildings, P.O. Box 7969, Madison, Wisconsin 53707, by calling (608) 261-6546 or at the appointed time and place the hearing is held.

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than **October 13, 1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Margaret Slusser at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 261-6546 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis of Rules

Statutory authority: ss. 101.02 (1), 560.01 and 560.02.

Statute interpreted: s. 1.11.

Pursuant to s. 1.11, Stats., all state agencies are required to prepare for all major actions significantly affecting the quality of the human environment a detailed statement describing the environmental impacts of and alternatives to proposed actions.

The proposed rules under ch. Comm 1 establish policies and procedures to be used by the Department of Commerce in the implementation of s. 1.11, Stats., including a classification of departmental actions with regard to their need for an environmental impact statement, the establishment of processes and procedures for creating environmental documents, and an opportunity for public input. The proposed rules follow the guidelines issued by the U.S. Council on Environmental Quality.

The proposed rules reflect the actions undertaken by the Department of Commerce. The Department of Commerce was created in 1996 with the enactment of 1995 Wisconsin Act 27 which combined portions of the then Department of Development and the Department of Industry, Labor and Human Relations. The current rules addressing the department's responsibilities for analyzing environmental impacts can be found within chapters DOD 7 and ILHR 1. Chapter ILHR 1 will be eventually revised, and possibly replaced, when the Department of Workforce Development completes its review of the rules relative to the programs and actions under its authority.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.
None; requirements of rule are specific to state agencies, Commerce, when preparing rule revisions that may have major actions significantly affecting the quality of the human environment.
2. Reporting, bookkeeping and other procedures required for compliance with the rules.
None for small businesses; state agencies when proposing rule revisions shall comply with procedures outlined within rule when rule revisions may have major actions significantly affecting the quality of the human environment.
3. Types of professional skills necessary for compliance with the rules.
None for small businesses; Commerce has in its employ staff for such research, reporting, and preparation of an environmental assessment or environmental impact statement itself. Commerce may also prepare an environmental assessment or environmental impact statement jointly with other agencies which may have concurrent authority; or adopt an environmental assessment or environmental impact statement or any portion of an environmental assessment or environmental impact statement prepared by others after reviewing and determining that the environmental assessment or environmental impact statement meets the requirements of this chapter with respect to content and public participation.

Environmental Analysis

The proposed administrative code creation is not categorized by Table ILHR 1.06 (4), the Department has evaluated this action and determined it to be a Type III action.

The proposed action is administrative in nature and has no potential direct effects on the environment. Its indirect effects on the environment are positive in that it will provide for more efficient environmental analysis and review of department actions in compliance with WEPA and NEPA policies and guidelines. Thus, the Department considers this action to have no potential for significant adverse impact.

Fiscal Estimate

Commerce has in its employ staff for both rule making, and research, reporting and processing of EA/EIS to meet the requirements of the rule.

No new procedures are required above the requirements of those currently existing in chs. DOD 7 and ILHR 1.

Notice of Hearing

Commerce

(*Credentials, Ch. Comm 5*)

Notice is given that pursuant to chs. 101, 145 and 167 and s. 227.51, Stats., the Department of Commerce proposes to hold a public hearing to consider the revision of rules under ch. Comm 5, Wis. Adm. Code, relating to credentials.

Hearing Information

September 30, 1997
Tuesday
9:30 a.m.
Madison
Room 611A
GEF #2, State Office Bldg.

A copy of the rules to be considered may be obtained from the Department of Commerce, Division of Safety and Buildings, P.O. Box 7969, Madison, Wisconsin 53707, by calling (608) 261-6546, or at the appointed times and places the hearings are held.

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than **October 15, 1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Ronald Acker at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

This hearing is held in a accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 261-6546 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis of Proposed Rules

Statutory Authority: Chs. 101, 145 and 167, and s. 227.51

Statutes Interpreted: Chs. 101, 145 and 167, and s. 227.51

The Division of Safety and Buildings within the Department of Commerce is responsible for adopting and enforcing rules relative to the protection of the life, health, safety and welfare of employees, frequenters and occupants in public buildings, places of employment and one- and 2-family dwellings. As part of that responsibility, the Division administers the issuance of numerous credentials that individuals and businesses are either mandated or permitted to obtain. These credentials are licenses, certifications and registrations that mostly relate to activities associated with the construction and inspection of buildings and structures or specific components and elements that serve buildings and structures. Chapter Comm 5 of the Wisconsin Administrative Code contains the rules for the issuance of the credentials.

The proposed rules consist of revisions to chapter Comm 5 and several other chapters as a result of recent statutory changes and existing rule inconsistencies discovered since chapter Comm 5 became effective. The following is a summary of the major changes being proposed.

1. Several informational notes that contain statutory reprints are updated with the current statutory wording.
2. The rules covering reinstatement of suspended or revoked nonplumbing-related credentials are revised and clarified.
3. The dwelling contractor financial responsibility certification rules are revised to be consistent with the statutory changes in 1995 Wisconsin Act 392. These changes expand the scope of the certification to include work on all one- and 2-family dwellings regardless of the date of construction of the dwelling. Also, a dwelling contractor financial responsibility-restricted certification is added for individuals using a bond of less than \$25,000.
4. A rule is added requiring the applicant to submit a copy of his or her criminal history record when applying for an initial or a renewal blaster's license.
5. Rules are added requiring fireworks manufacturers and manufactured home manufacturers to post their license at the manufacturing plant.
6. The rules relating to the certifications of electricians and commercial electrical inspectors are revised. The definition of "electrical construction" is clarified as it relates to the required qualifying experience for electricians, and the required qualifying experience for inspector certification may be in any type of electrical work.
7. After June 30, 1999, the renewal of the rental weatherization inspector certification will be contingent upon completion of a minimum number of continuing education hours.
8. The redundant rules for suspensions and revocations of electrician certifications are removed from chapter Comm 17.
9. For plan review and inspections of one- and 2-family dwellings, rules are added to clarify the type of inspector certification required.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The proposed rules will affect any businesses that obtain licenses, certifications or registrations from the Division of Safety and Buildings.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

Under the proposed rules, an applicant must submit a copy of his or her criminal history record when applying for an initial or a renewal blaster's license. Also, an applicant for an electrical contractors-restricted certification must submit proof of municipal licensure and the date the municipal ordinance changed to require state certification.

3. Types of professional skills necessary for compliance with the rules.

There are no types of professional skills necessary for compliance with the proposed rules.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter ILHR 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing chapter Comm 5. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing chapter Comm 5. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

Notice of Hearing

Regulation & Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2) and ch. 451, Stats., and interpreting ch. 451, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to repeal ss. RL 70.02 (6), (7) and (14), 71.01 (2), 71.02, 71.03 (intro.), (1) (a), (b) and (c); to renumber s. RL 70.02 (1), (2), (3), (4) and (5); to renumber and amend s. RL 71.03 (2); to amend ss. RL 70.02 (intro.) and (8), 71.01 (intro.) and (4) and (5), 72.02 (1), 72.03 (1), 72.06 (3), 72.07 (2) (intro.) and (a), 73.01 (title) and (intro.), (4), (6), (8) and (9); and to create ss. RL 70.02 (1), 71.04, 73.02 and 73.03, relating to the certification and regulation of acupuncturists.

Hearing Information

September 30, 1997 Room 180
Tuesday 1400 E. Washington Ave.
9:00 a.m. MADISON, WI

Appearances at the Hearing

Interested people are invited to present information at the hearing. People appearing may make an oral presentation, but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Dept. of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **October 13, 1997** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: s. 227.11 (2) and ch. 451

Statutes interpreted: ch. 451

In this proposed rule-making order, the Department of Regulation and Licensing amends, creates and repeals numerous provisions contained in chs. RL 70 to 73, relating to the certification and regulation of acupuncturists. Section RL 70.02 (8) is revised to clarify the definition of "herbal medicine." Section RL 71.01 is revised to delete information related to being certified in another state and removes the reference to s. RL 71.02, which is being repealed in this rule-making order as it applied to a grandfathering period which has since expired. Section RL 71.01 (intro.), (4) and (5) are revised to correctly identify the regulatory authority, to include the citation for prohibited bases for discrimination of persons with convictions and what constitutes a passing score for the NCCA examination. Section 71.03 (1) (intro.), (a), (b) and (c) are repealed and recreated to define "actively engaged in the certified practice of acupuncture," to itemize the requirements for being certified in Wisconsin, having used acupuncture based on using Oriental diagnostic and therapeutic techniques, performed general health care in at least 70% of all patient visits and practice clean needle technique.

Section RL 71.03 (2) is renumbered and amended to require that the candidate provide evidence satisfactory to the Department that the requirements for certification for acupuncture in the state or United States territory of original credentialing are substantially equivalent to Wisconsin's requirements. Section RL 71.04 is created to provide guidelines for how a credential holder may renew his or her certificate after 5 years of nonrenewal. The credential holder will within one year prior to renewal have successfully completed the NCCA examination on acupuncture or have been actively engaged in acupuncture practice during the 5 years immediately preceding application for renewal.

Section RL 72.02 (1) is amended to delete language requiring the sterilization of acupuncture equipment coming in contact with the patient's blood or penetrating the skin. Section RL 72.03 (1) is amended to replace "choice" with "option" for clarity. Section RL 72.06 (3) is amended to accurately reference "HIV" by removing the term "virus."

Section RL 72.07 (2) (intro.) and (a) are amended to require that an acupuncturist obtain a patient history pertinent to his or her complaints and require that acupuncturists in a non-emergency refer a patient with a potentially serious disorder to a physician for a consultation, or written diagnosis prior to commencing acupuncture treatment. Section RL 73.01 (title) and (intro.), (4), (6), (8) and (9) are amended to revise the title and to clarify grounds for denial of certification or discipline.

Sections RL 73.02 and 73.03 are created to outline use of titles and examples of false, deceptive or misleading advertising. The section contains examples of titles for advertising and the conditions under which an acupuncturist is prohibited from using the initials "M.D." or "medical doctor." Existing law prohibits acupuncturists from advertising in a manner that is false, deceptive or misleading. Currently no statute or administrative rule identifies specific professional titles that are prohibited or generally permitted to be used by certified acupuncturists in professional practice. Certificate holders have questioned whether all certified acupuncturists may use certain professional titles, such as D.O.M. (Doctor of Oriental Medicine) or C.A. (Certified Acupuncturist) and under which circumstances a certificate holder may use the title "Dr." or "Doctor." The use of a title, such as Ph.D., in professional practice is a form of advertising given limited constitutional protection as commercial speech. Formulation of rules must be consistent with constitutional protection from state regulation and also effectively enforce the requirement that advertising not be false, deceptive or misleading.

Text of Rule

SECTION 1. RL 70.02 (intro.) is amended to read:

RL 70.02 Definitions. As used in ch. 451, Stats., and chs. RL 70 to 73:

SECTION 2. RL 70.02 (1), (2), (3), (4) and (5) are renumbered s. RL 70.02 (2), (3), (4), (5) and (6).

SECTION 3. RL 70.02 (1) is created to read:

RL 70.02 (1) (a) “Actively engaged in the certified practice of acupuncture” means using acupuncture, under the authorization of a license, certification or registration to practice acupuncture, as the primary means of treatment of patients and such treatment is dependent upon a thorough understanding and application of Oriental diagnostic theories and practices, not as an adjunctive therapy.

(b) The applicant provides evidence satisfactory to the department that he or she has been “actively engaged in the certified practice of acupuncture” during the 5 years immediately preceding the application in any other state or territory of the United States. Any applicant, whether or not licensed, registered or certified to practice another healing art, shall provide the department with satisfactory evidence that the applicant:

1. Used acupuncture based on Oriental diagnostic and therapeutic theories and practices as the primary means of treating diseases and disorders in a minimum of 100 patients with a minimum of 500 patient visits during the 12 months immediately preceding the date of the application, as demonstrated by patient records or affidavits.

2. Performs general health care in at least 70% of all patient visits, and performs specialized health care such as anesthetics, cosmetic treatments, addiction therapies or weight control in no more than 30% of patient visits.

3. Practices consistent with the standards identified in a clean needle technique course acceptable to the Department.

SECTION 4. RL 70.02 (6) and (7) are repealed.

SECTION 5. RL 70.02 (8) is amended to read:

RL 70.02 (8) “Herbal medicine” means the use of herbs and plants plant, animal and mineral substances to assist in attaining or maintaining a state of health or relief from symptoms of disease.

SECTION 6. RL 70.02 (14) is repealed.

SECTION 7. RL 71.01 (intro.) is amended to read:

RL 71.01 Application for certification. An applicant for certification as an acupuncturist who has never practiced acupuncture or who has never been certified as an acupuncturist elsewhere, or who does not qualify for certification under s. RL 71.02 or 71.03, shall submit to the bureau of health service professions, department of regulation and licensing:

SECTION 8. RL 71.01 (2) is repealed.

SECTION 9. RL 71.01 (4) and (5) are amended to read:

RL 71.01 (4) Evidence that the applicant has never been the subject of any disciplinary action by any professional or licensing board, or authority, and subject to ss. 111.321, 111.322 and 111.335, Stats., has not been convicted of any offense substantially related to the practice of acupuncture.

(5) Evidence of successful completion of the NCCA examination in acupuncture, with a passing score as determined by the NCCA.

SECTION 10. RL 71.02 is repealed.

SECTION 11. RL 71.03 (intro.), (1) (a), (b) and (c) are repealed.

SECTION 12. RL 71.03 (2) is renumbered s. RL 71.03 and amended to read:

RL 71.03 Application for reciprocal certification. The applicant provides evidence satisfactory to the department that the requirements for certification in the other state or territory of the United States in which he or she is licensed, certified or registered to practice acupuncture are substantially equivalent to the requirements for initial certification as an acupuncturist in Wisconsin.

SECTION 13. RL 71.04 is created to read:

RL 71.04 Renewal of certification after 5 years. An acupuncture certificate holder who fails to renew his or her credential within 5 years following the renewal date of the certificate shall be required to have taken and passed the examination required under s. RL 71.01 (5) within one year prior to the date of application for renewal, unless the applicant provides evidence satisfactory to the department that he or she has actively engaged in the certified practice of acupuncture during the 5 years immediately preceding the application in any other state or territory of the United States.

SECTION 14. RL 72.02 (1) is amended to read:

RL 72.02 (1) All nondisposable needles, acupuncture equipment that comes in contact with a patient's blood or body fluids or penetrates the skin (e.g., needles, guides), and equipment used to handle or store needles (e.g., trays), and acupuncture equipment that comes in contact with a patient's blood or body fluids or penetrates the skin shall be sterilized after each use.

SECTION 15. RL 72.03 (1) is amended to read:

RL 72.03 (1) Before any treatment commences, a patient shall be given the choice option, at the patient's own expense, to have treatment with disposable acupuncture needles, which have been sterilized and wrapped in accordance with s. 451.12, Stats., and maintained in accordance with s. RL 72.02 (7).

SECTION 16. RL 72.06 (3) is amended to read:

RL 72.06 (3) If an acupuncturist learns that a patient has AIDS, hepatitis, or any other blood-borne infectious disease, or has tested positive for the HIV virus, then the acupuncturist shall use disposable needles in treating that patient.

SECTION 17. RL 72.07 (2) (intro.) and (a) are amended to read:

RL 72.07 (2) An acupuncturist shall obtain from each patient a medical history pertinent to the patient's chief complaints. When an acupuncturist encounters a patient presenting with a potentially serious disorder including, but not limited to, cardiac conditions, uncontrolled hypertension, acute abdominal symptoms, acute undiagnosed neurological changes, unexplained weight loss or gain in excess of 15% of body weight within

a 3 month period, suspected fracture or dislocation, suspected systemic infection, communicable disease, any serious undiagnosed hemorrhagic disorder or acute respiratory distress without previous history or diagnosis, the acupuncturist shall:

(a) In a non-emergency situation, refer the patient for evaluation to, and request a consultation or written diagnosis from, a duly licensed physician prior to commencing acupuncture treatment or continuing treatment if the situation is discovered in the course of treatment.

SECTION 18. RL 73.01 (title) and (intro.), (4), (6), (8) and (9) are amended to read:

RL 73.01 Grounds for denial of certification or discipline. The department shall deny an application for renewal, or deny, limit, suspend, or revoke a certificate or reprimand or impose a forfeiture upon an acupuncturist upon a finding of unprofessional conduct. Unprofessional conduct includes, but is not limited to, that the applicant or acupuncturist has engaged in conduct which evidences a lack of knowledge or ability to apply professional principles or skills, including, but not limited to, the following:

(4) Having been disciplined in another jurisdiction in any way by a certifying, registering, or licensing authority for reasons substantially the same as those set forth in s. 451.14, Stats., or department regulations in chs. RL 70 to 73.

(6) Practicing acupuncture fraudulently, beyond its authorized scope, with gross incompetence or gross negligence, with incompetence on one or more occasion, ~~or~~ with negligence on more than one occasion, on practicing acupuncture or any secondary therapeutic technique beyond or inconsistent with training, education or experience.

(8) Failing to provide duplicate patient records, ~~at the acupuncturist's expense, when requested by the patient or the department.~~ If the original record is not in English, the acupuncturist shall provide the duplicate in English translation performed by a competent translator. Thirty days is presumed to be a reasonable period of time in which to obtain the translation.

(9) Failing to maintain complete and accurate records of each patient visit, including patient histories, summaries of examinations, diagnoses, and treatments performed or prescribed, and referrals to other practitioners of acupuncture or any other healing art, for a period of 7 years past the most recent visit of the patient to whom the record refers, or the time the patient reaches the age of majority.

SECTION 19. RL 73.02 and 73.03 are created to read:

RL 73.02 Use of titles. (1) Any person certified under ch. 451, Stats., to practice acupuncture shall include the title "acupuncturist," "Wisconsin certified acupuncturist," or a similar title in advertisements of acupuncture services.

(2) Any person certified under ch. 451, Stats., to practice acupuncture who has been conferred the degree of doctor of oriental medicine may advertise his or her services as an acupuncturist to the public using the title "doctor of oriental medicine" or "D.O.M.," providing the title "acupuncturist," "Wisconsin certified acupuncturist," or a similar title is used in the same advertisement.

RL 73.03 Examples of false, deceptive or misleading advertising. Enumeration of these examples is not intended to limit the operation of the prohibition against false, misleading or deceptive advertising to the examples set forth. The following are examples of false, deceptive or misleading advertising prohibited under s. RL 73.01 (10):

(1) An acupuncturist advertises in a manner that is false, deceptive or misleading if the acupuncturist advertises acupuncture services using a title that includes the words "medical doctor" or the initials "M.D.," unless the acupuncturist meets the requirements of s. 448.03 (3) (a), Stats.

Note: Section 448.03 (3) USE OF TITLES. (a) No person may use or assume the title "doctor of medicine" or append to the person's name the letters "M.D." unless one of the following applies:

1. The person possesses the degree of doctor of medicine.

2. The person is licensed as a physician under this subchapter because the person satisfied the degree requirement of s. 448.05 (2) by possessing a medical degree that was conferred by a medical school recognized and listed as such by the World Health Organization of the United Nations.

(2) An acupuncturist advertises in a manner that is false, deceptive or misleading if an acupuncturist advertises acupuncture services using the title "Doctor" or the abbreviation "Dr.," or "Ph.D." in connection with the practice of acupuncture unless the acupuncturist possesses a license or certificate which authorizes such use or possesses an earned doctorate degree which is in acupuncture or Oriental medicine.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules,
Dept. of Regulation & Licensing
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearings

Transportation

Notice is hereby give that pursuant to ss. 85.16(1), 227.11(2)(a), and 348.25(3), Stats., the Department of Transportation will hold public hearings at the following locations to consider amendments to ch. Trans 261, Wis. Adm. Code, relating to multiple trip mobile home permits.

Hearing Information

October 7, 1997
Tuesday
2:00 p.m.

Hill Farms State Transportation Bldg.
4802 Sheboygan Avenue
Room 254
Madison, WI

October 8, 1997
Wednesday
10:00 a.m.

Marshfield City Hall
630 South Central Avenue
City Council Chamber--Basement Level
Marshfield, WI

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Written Comments

The public record on this proposed rule making will be held open until **October 22, 1997**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Kathleen Nichols, Wisconsin Department of Transportation, Division of Motor Vehicles, Motor Carrier Services Section, Room 151, P. O. Box 7981, Madison, WI 53707-7981.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1), 227.11(2)(a), and 348.25(3)

STATUTE INTERPRETED: ss. 340.01(29), 348.05, 348.25, and 348.27

General Summary of Proposed Rule. The proposed rule creates s. Trans 261.155, which allows the Department to issue multiple trip permits for mobile homes or modular building sections that do not exceed 16 feet in width. These permits may be used only to allow transportation of mobile homes and modular building sections for a maximum distance of 5 miles to complete the manufacturing process. These permits may not be used to transport mobile homes or modular building sections to sales or building sites.

If a local road or county highway is used to transport these loads, the local or county highway authority with the responsibility to maintain these highways must approve the movement.

Additional safety requirements include the preparation of a traffic safety plan, use of a flag person at intersections, an additional amber flashing or revolving light visible from the front, and a maximum speed of 35 miles per hour.

Fiscal Impact

The Department estimates that there may be a fiscal impact on the liabilities or revenues of any county, city, village or town responsible for maintaining local roads.

Initial Regulatory Flexibility Analysis

This proposed rule will have no adverse impact on small businesses.

Copies of Proposed Rule

Copies of the rule may be obtained upon request, without cost, by writing to Kathleen Nichols, Wisconsin Department of Transportation, Division of Motor Vehicles, Motor Carrier Services Section, Room 151, P. O. Box 7981, Madison, WI 53707-7981, or by calling (608) 266-6648. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

Text of Proposed Rule

SECTION 1. Section Trans 261.155 is created to read:

Trans 261.155 MULTIPLE TRIP 16 FOOT WIDE MOBILE HOME AND MODULAR BUILDING SECTIONS. (1) The issuing authority may issue annual or consecutive month permits to licensed mobile home transport companies and to licensed mobile home manufacturers for the transportation of mobile homes and modular building sections that are not greater than 16 feet wide in total exterior width including all protrusions, but only if all of the following conditions are satisfied:

- (a) The movement is limited to a distance of 5 straight-line air distance miles.
- (b) The mobile home or modular building sections are transported from a manufacturing plant to or from another manufacturing plant, including a subcontractor's manufacturing plant. This includes movement to a manufacturer-owned storage lot where partially completed mobile homes are temporarily stored while awaiting further construction.
- (c) The mobile home or modular building sections are being transported to complete the manufacturing process.
- (d) A traffic safety plan has been prepared by the manufacturer and approved by the local authority or person responsible for maintaining the highways over which the carrier will transport a load authorized by this section.
- (2) A permit authorized in sub. (1) may not be issued to transport 16-foot wide mobile homes or modular building sections from a manufacturing plant to a sales location or a building site.
- (3) A permit issued under this section is not a guarantee of the sufficiency of any highway or structure for the transportation of the vehicle or the load.
- (4) For each local road or county highway on which the applicant seeks authority to operate, a permit for a 16-foot wide mobile home or modular building section may be issued only upon presentation of written proof that permission for operation has been granted by any local authority or person in charge of maintaining those highways.
- (5) When transporting a 16-foot wide mobile home or modular building sections, the power unit shall be stopped when necessary by the driver to allow traffic to pass from either direction without delay.
- (6) The wheels of a 16-foot wide mobile home or undercarriage shall be operated as close to the right edge of the shoulder as possible in order to provide minimum interference with the left lane of traffic. However, to minimize damage to the shoulder in the area immediately adjacent to the pavement, the right wheels may not be operated on the shoulder within 2 feet of the edge of the pavement except to cross this area.
- (7) The maximum speed of a 16-foot wide mobile home or modular building section operating on highways without paved shoulders may not exceed 35 miles per hour.
- (8) In addition to the amber flashing or revolving lamps specified in s. Trans 261.10(2), each 16-foot wide mobile home or modular building section shall be equipped with a similar lamp visible from the front of the vehicle when operated on 2-way roadways.
- (9) A flag person shall accompany each movement in which a highway is crossed. The flag person shall assist the driver in managing traffic as the vehicle and load cross a highway intersection.
- (10) A permittee shall certify, and may be required to present satisfactory written evidence, that the amount of insurance coverage given in s. Trans 261.14(6)(b), or a bond in a form satisfactory to the issuing authority, will be in effect for the vehicle and load designated in the permit while operating on the public highway, unless this requirement is expressly waived by the issuing authority.

NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,
UNDER S. 227.19, STATS.

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade & Consumer Protection (CR 97-43):

Ch. ATCP 31 – Relating to standards for repealing site-specific prohibitions against the use of pesticides found in groundwater.

Commerce (CR 97-80):

Ch. Comm 27 – Relating to piers for new manufactured homes.

Corrections (CR 96-185):

Ch. DOC 309 – Relating to leisure time activities, inmate activity groups, and religious beliefs and practices for inmates.

Corrections (CR 97-69):

Ch. DOC 306 – Relating to security procedures at correctional institutions.

Employee Trust Funds (CR 96-145):

S. ETF 10.12 (4) – Relating to withdrawal of funds invested in the Public Employee Trust Fund by a separate retirement system, as permitted by s. 40.03 (1) (n) and (2) (q), Stats.

Revenue (CR 97-68):

SS. Tax 11.39 and 11.41 – Relating to the Wisconsin sales and use tax as it applies to manufacturers.

Revenue (CR 97-75):

S. Tax 11.14 – Relating to the use of exemption certificates.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.

Commerce (CR 97-26):

An order repealing and recreating ch. Comm 113, relating to the annual allocation of volume cap for calendar year 1998.
Effective 01-01-98.

Commerce (CR 97-37):

An order creating subchs. I, II and III of ch. DOD 6, and creating ch. Comm 108, relating to the Community Development Block Grant Program.
Effective 11-01-97.

Workforce Development (CR 96-181):

An order affecting ss. DWD 272.01 and 272.03, relating to the minimum wage.
Effective 10-01-97.

Workforce Development (CR 97-33):

An order affecting chs. DWD 290 and ILHR 290, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.
Effective 10-01-97.

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